IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 508 OF 2003

IN

SUMMARY SUIT NO. 860 OF 2003

Smt.Lilavanti Ramesh Dedhia .. Plaintiffs

versus

M/s.Azad Bhavan Restaurant & ors. .. Defendants

...

Mr.M.M. Kenia for the plaintiff.

Mr.Murtala Najmi i/b S.G. Vakil for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 1st March 2005.

P.C.:

1. This Summons for Judgement is taken out by the plaintiff in a suit for recovery of the principal sum of Rs.50,000/- and interest thereon.

2. The defendant no.1 is a partnership firm and

defendant nos.2 and 3 are its partners. The plaintiff advanced to the defendant no.1 a loan of Rs.50,000/-. The defendant no.1 executed a promissory note on 1st July 2000 promising to pay Rs.50,000/- with interest. Thereafter, the defendant issued a cheque of Rs.50,000/- on 4th January 2003. However, the said cheque was dishonoured when presented for payment. Copy of the promissory note is annexed as Exhibit-B and copy of the cheque is annexed as Exhibit-C, to the plaint. Thereafter, the plaintiff issued a notice demanding repayment on 20th January 2003. The defendant sent a reply dated 10th February 2003 denying the liability. Hence, this suit.

3. Learned counsel for the defendant firstly submits that the writing Exhibit-B does not amount to promissory note and relies upon the judgement of the Andhra Pradesh High Court in Kotla Sudheer Kumar Vs. Mallavarapu Jojayya reported in AIR 2002 Andhra Pradesh 170. A perusal of the translation of the promissory note (Exhibit-A) shows that it is addressed to the plaintiff, it contains a statement that the defendant had received a sum of Rs.50,000/- and it contains a promise to pay as and when

demanded. In my view, the writing amounts to a promissory note.

4. It was secondly contended by the learned counsel for the defendant that the cheque dated 4th January 2003 was not issued to the plaintiff but was issued to one Laxmichand Vira. The cheque was an inchoate instrument. Under section 20 of the Negotiable Instruments Act, an inchoate Negotiable Instrument is not void but the holder has an authority to fill up the blanks.

5. In my view therefore, none of the defences raised by the defendants have any merit. The signature on the promissory note is not denied. The signature on the cheque is also not denied. In the circumstances, the defendant can be granted only conditional leave to defend the suit.

6. The defendants are granted conditional leave to defend the suit subject to their depositing in the court a sum of Rs.69,000/- as claimed in Exhibit-I to the plaint within a period of four weeks. On such deposit, the suit shall stand transferred to the list of commercial causes. If the amount is deposited,

the plaintiff shall be at liberty to withdraw the same by furnishing security to the satisfaction of Prothonotary and Sr. Master. On failure of the defendant to pay, the plaintiff shall have liberty to apply.

6. On deposit of the sum, the suit shall stand transferred to the list of commercial causes. The defendants shall then file written statement within a period of one month.

D.G. KARNIK, J